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# M MANOHAR REDDY AND ANOTHER

**v.**

# UNION OF INDIA AND OTHERS

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SUPREME COURT, INDIA
(2013) 3 SUPREME COURT CASES 99
AFTAB ALAM J
RANJANA P DESAI J
[WRIT PETITION (C) NO: 174 OF 2012†,]

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4 FEBRUARY 2013

***[CONSTITUTIONAL LAW]*** *Constitution of India - Arts. 217(1), 32 and 226 - Appointment of High Court Judge - Scope of judicial review and grounds for issuance of writ of quo warranto - Reiterated, judicial review is permissible only on two grounds, namely: (i) lack of eligibility, and (ii) lack of effective consultation*

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***[CONSTITUTIONAL LAW]*** *Constitution of India - Arts. 217(1) and 32 - Appointment of High Court Judge - "Effective consultation" - What is - Facts not knowable by authorities involved in consultative process nor known to putative appointee, held, cannot vitiate consultative process - Whether there was lack of effective consultation as allegedly R-3 was appointed as Judge of High Court in spite of pendency of criminal case against R-3 and whether a writ of quo warranto would lie - Neither R-3 nor constitutional functionaries involved in consultative process under Art. 217(1) being aware of pendency of criminal case under ss. 147, 342, 427 and 324 IPC for alleged involvement of R-3 in a students' strike in which they caused damage to government bus - FIR in said case being lodged against unknown persons - Said case being declared as long standing and all accused being discharged (as prosecution was allowed to withdraw case) - Nobody being aware of pendency of said criminal case at the time of appointment of R-3 as Judge of High Court - Effect*

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**Held:**

No case is made out for issuing writ of quo warranto for quashing appointment of R-3 as Judge of High Court - Simply because a charge-sheet was submitted by the State Police no conscious knowledge of the fact can be attributed to State Government - None of the members of High Court nor Supreme Court Collegia was aware of the fact - In case it comes to light after the

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† Under Article 32 of the Constitution of India

appointment that some material facts were withheld by the person under consideration or suppressed at his behest then that may be a case of fraud that would vitiate the consultative process and consequently the appointment resulting from it - But such is not the case here, and writ petition is without merits - Further, as writ petitioners were competent advocates and as *prima facie* there was no suppression of material facts by appointee (R-3), costs of Rs 50,000 each imposed on both writ petitioners

***[CONSTITUTIONAL LAW]*** *Constitution of India - Arts. 217(1), 32 and 226 - Appointment of High Curt Judge - Whether there was suppression of facts by appointee regarding pendency of any criminal case against him - Determination of - Appointee allegedly being involved in students' strike - FIR in said case being lodged against unknown persons - Appointee being implicated in view of s. 161 CrPC statements - Said case being declared as long standing and all accused being discharged (as prosecution was allowed to withdraw case) - Although a proclamation under ss. 82 and 83 CrPC was ordered to be issued, record not showing any such publication - Record however showing service being effected against A-3 (appointees being A-4 and R-3) - There being nothing on the record to show that any attempt, let alone any serious attempt, was made to serve summons or issue non-bailable warrants on any of the accused persons - On facts, held, there was no suppression of material facts by appointee - From the record of the case it is very difficult to hold that appointee (R-3) was even aware of the pendency of a criminal case against him and that he was required to appear in court in connection with that case - It is relevant that before his appointment as High Court Judge R-3 was Additional Advocate General of the State and had he been aware of the case, he would have got it concluded one way or the other - Therefore, it is wrong to describe him as an absconder and a proclaimed offender - Hence, R-3's appointment, upheld - Criminal Procedure Code, 1973 - ss. 82, 83, 161 and 321 - Knowledge of criminal proceedings against a person - When can be imputed to that person - Words and Phrases - "Suppression of facts"*

***[CONSTITUTIONAL LAW]*** *Constitution of India - Arts. 32, 226, 129 and 215 - PIL - Malicious petition filed by two advocates allegedly in public interest but filed only to malign Judge of High Court - It is important to uphold the institutional integrity of the court system and protect court from uncalled for attacks and individual Judges from unjust infliction of injuries - Hence, petition dismissed and exemplary costs imposed against each advocate.*

A ***[CONSTITUTIONAL LAW]*** *Constitution of India - Art. 124(4) and Art. 217 r/w Art. 124(4) - Impeachment of Judge of Supreme Court or High Court - "Misbehaviour" - Facts constituting misbehaviour though not suppressed by person appointed but coming to light long after appointment - Effect of - Held, in case there was no suppression and the*
B *facts come to light a long time after the person appointed has assumed office of a Judge and if Members of the two Houses of Parliament consider the discovered facts sufficiently serious to constitute misbehaviour and to warrant his removal, then he may still be removed from office by taking recourse to the provisions of Art. 124(4) or Art. 217 r/w*
C *Art. 124(4) as the case may be - Facts warranting inference of*

**Held:**

In *Mahesh Chandra Gupta* case, (2009) 8 SCC 273, the Supreme
D Court examined the class of cases relating to appointment of High Court Judges that might fall under judicial scrutiny and concluded that judicial review may be called for on two grounds, namely: (i) "lack of eligibility", and (ii) "lack of effective consultation". Admittedly, the eligibility of R-3 is not an issue. Then, can the
E case be said to raise the issue of "lack of effective consultation"? (paras 17 and 20).

*Supreme Court Advocates-on-Record Assn v. Union of India, (1993) 4 SCC 441*

*Shanti Bhushan v. Union of India, (2009) 1 SCC 657*

F *Mahesh Chandra Gupta v. Union of India, (2009) 8 SCC 273;*

*Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609, applied*

*Special Reference No. 1 of 1998, In re, (1998) 7 SCC 739, referred to*

*Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239, cited*

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The State Government is not a monolith and it does not function as a single person. The State Government functions in different departments manned by different people and simply because a charge-sheet was submitted by the State Police no conscious
H knowledge of the fact can be attributed to the State Government. None of the members of the High Court or the Supreme Court Collegia was aware of the fact. The State Government was equally unaware of the fact and so was the Central Government as is evident from the résumé prepared by the Law Ministry as

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also the IB Report. From all the attending circumstances, it is clear beyond doubt that not only R-3 himself but practically no one was aware of the pendency of the case in which he was named as an accused. To fault the consultative process for not taking into account a fact that was not known at that time would put an impossible burden on the constitutional authorities engaged in the consultative process and would introduce a dangerous element of uncertainty in the appointments. (paras 42 to 46)

In case it comes to light that some material facts were withheld by the person under consideration or suppressed at his behest then that may be a case of fraud that would vitiate the consultative process and consequently the appointment resulting from it. But in case there was no suppression and the fact comes to light a long time after the person appointed has assumed the office of a judge and if the members of the two houses of Parliament consider the discovered fact sufficiently serious to constitute misbehaviour and to warrant his removal, then he may still be removed from office by taking recourse to the provisions of Article 124(4) or Article 217 read with Article 124(4) as the case may be. In case, however, the fact was unknown and there was no suppression of that fact, a writ of *quo warranto* would certainly not lie on the plea that the consultative process was faulty. (para 47)

Therefore, no case is made out for issuing a writ of *quo warranto* quashing the appointment of R-3 as the Judge of the High Court. (para 48)

*Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609, applied and explained*

Writ petition dismissed with exemplary costs SS-D/51393/CR

*For the petitioners; - Shanti Bhushan, Senior Advocate (Gopal Sankaranarayan, Senthil Jagadeesan and Karthik Seth, Advocates)*

*For the respondents - GE Vahanvati, Attorney General (Vipin Kr Jai, Advocate)*

A **Chronological list of cases cited:**

*Centre for PIL v. Union of India (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609*

*Mahesh Chandra Gupta v. Union of India (2009) 8 SCC 273*

*Shanti Bhushan v. Union of India (2009) 1 SCC 657*

B *Special Reference No. 1 of 1998, In re (1998) 7 SCC 739*

*Supreme Court Advocates-on-Record Assn v. Union of India (1993) 4 SCC 441*

*Kumar Padma Prasad v. Union of India (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239*

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## JUDGMENT

**Aftab Alam J:**

D **[1]** The two petitioners, who are advocates of the High Court of Andhra Pradesh, have filed this petition under Article 32 of the Constitution of India, purportedly in public interest. This writ petition seeks a writ in the nature of *quo warranto*, quashing the appointment of Respondent 3 as a Judge of the High Court of E Andhra Pradesh and a writ in the nature of *mandamus* commanding the Bar Council of Andhra Pradesh to cancel his enrolment as an advocate.

**[2]** The quashing of the appointment of Respondent 3 as a F Judge of the High Court is sought on the ground that the consultation process leading to his appointment was vitiated as both the High Court and the Supreme Court Collegia as well as the Central Government failed to consider two essential facts; one, at the time of his appointment, a criminal trial was pending in G which Respondent 3 was not only an accused but a proclaimed offender and the other that even at the time of his enrolment as an advocate he had concealed the criminal proceedings and in the relevant column of the application for enrolment with the Bar Council, he falsely stated that there was no pending proceeding against him. H

**[3]** In order to put the petitioners' challenge to the appointment of Respondent 3 as a Judge of the High Court in the proper perspective, it will be useful to give here a brief outline of the relevant facts.

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**[4]** The name of Respondent 3 was recommended for appointment as a Judge of the Andhra Pradesh High Court on 14-11-1998 by the Chief Justice of the High Court with the other two Collegium members agreeing with the recommendation. The recommendation made by the High Court was received in the Supreme Court on 15-2-1999. At that time the age of Respondent 3 was 41 years and six months and he had completed over 15 years of legal practice.

**[5]** In the résumé prepared by the Ministry of Law and Justice that came to be put up before the Supreme Court Collegium, Respondent 3 was described as under:

Shri N.V. Ramana, Advocate

BIODATA

He was enrolled as an Advocate on 10-2-1983. He has practised in the High Court of Andhra Pradesh, Central and Andhra Pradesh Administrative Tribunals and the Supreme Court of India in Civil, Criminal, Constitutional, Labour, Service and Election matters. He has specialised in Constitutional, Criminal, Service and Inter-State River laws. He has handled about 800 cases during the last three years. He has functioned as Panel Counsel for Andhra Bank, Vysya Bank, United India Insurance Co. and Food Corporation of India. He has also functioned as Additional Standing Counsel for the Central Government and the Standing Counsel for the Railways in the Central Administrative Tribunal at Hyderabad. At present he is functioning as the Additional Advocate General of Andhra Pradesh. His professional income during the last three years was as tabulated below:

| Year | Gross income | Taxable income |
|---|---|---|
| 1996-1997 | 7,87,210 | 2,21,200 |
| 1997-1998 | 10,31,465 | 3,68,950 |
| 1998-1999 | 38,95,973 | 16,94,928 |

And the Intelligence Bureau Report about him stated as under:

IB REPORT

He enjoys good personal/professional image. Nothing adverse against his character, reputation and integrity has come to notice, so far. He has also not come to notice for links with any political party/communal organisation.

A None of his relatives is either serving or has served earlier as Judge in any High Court or Supreme Court.

**[6]** Following the consultative process between the different constitutional functionaries, a Notification was issued on 19-6-2000 appointing Respondent 3 as a Judge of the Andhra Pradesh B High Court and Respondent 3 took the oath and assumed the office as a Judge of the Andhra Pradesh High Court on 27-6-2000. Since then he is continuously working in that capacity.

**[7]** It now comes to light that all through the period when the C recommendation was made for his appointment as a Judge and the notification was issued and he assumed the office as a Judge, a criminal case was pending in which Respondent 3 was an accused. It is, therefore, necessary to look into the criminal case and its proceedings.

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**[8]** The criminal case in question dates back to the year 1981 when Respondent 3 was a student of Nagarjuna University. The students of the University, it appears, complained of inadequate public transport facilities for commuting from their homes to the E University as only a few buses plying between Guntur and Vijayawada stopped at the University. They demanded that more buses should stop at the University. As is not uncommon with the youth in this country, some of the students of the University took to agitation in connection with the demand and at about 8.30pm F on 13-2-1981, a group of about 30 students put road blocks on GNT Road, opposite Nagarjuna University, causing stoppage of all vehicles on the road. At about 9.15pm, a bus of State Transport Corporation, on its way from Guntur to Vijayawada, arrived there when there was already a heavy jam and pulled up at the road G flank. In such situations, unfortunately a State bus is the softest and the most vulnerable target. In this case also the State bus became the target of the agitating students' ire. The driver of the bus was pulled down and the door to the driver's seat was damaged. Some miscreants pelted stones on the bus and smashed H its windscreen and glass windows with iron rods. One of the passengers also received some injuries. By this time a police party also came to the spot. At this stage, an attempt was made to set fire to the bus by throwing a burning oil cloth tied to a rod inside the bus. But, a policeman put out the burning cloth and the bus I was saved from any further damage. Shortly thereafter the police dispersed the agitating students and restored normalcy. On the

same day at 11pm the driver of the bus lodged a first information report in connection with the incident at Mangalagiri Police Station where it was registered as Crime No. 55 of 1981 under Sections 147, 342, 427 and 324 of the Penal Code. The FIR was against unknown persons and the accused were described as "Nagarjuna University students". A B

**[9]** The police after investigation drew up a charge-sheet dated 10-10-1983 and on 19-10-1983 submitted it in the Court of the Munsif Magistrate, Mangalagiri where it was registered as CC No. 229 of 1983. From the charge-sheet it appears that in their statements recorded under Section 161 of the Code of Criminal Procedure, the driver and the conductor of the bus (apart from some other witnesses) identified and named five persons as the student leaders who were leading the agitation on 13-2-1981. The charge-sheet, accordingly, cited five persons as accused and Respondent 3 figured among them at Serial No. 4. All the accused were shown as absconders. The charge-sheet, however, does not disclose what steps were taken by the investigating officer to secure the presence of the accused. There is no mention that the investigating officer ever tried to obtain from the court warrants of arrest or processes under Sections 82 and 83 of the Code of Criminal Procedure for apprehending the accused. They were simply shown as absconders without observing the procedure sanctioned by law before an accused can be called an absconder. C D E

**[10]** The fact of the matter, however, is that this Crime Case No. 229 of 1983 (later renumbered as CC No. 75 of 1987 and then CC No. 167 of 1991) was undeniably pending at the time of appointment of Respondent 3 as a Judge of the High Court and it is contended on behalf of the petitioners that the failure to take into account the pendency of the criminal case while his name was recommended by the High Court Collegium and approval and consent was accorded by the Supreme Court Collegium and the Central Government for his appointment as a Judge of the High Court deeply flawed the participatory consultative process as envisaged in Article 217(1) of the Constitution and as developed by the decisions of this Court in *Supreme Court Advocates-on-Record Assn.*[1] and later on in *Special* F G H

1. *Supreme Court Advocates-on-Record Assn. v. Union of India* (1993) 4 SCC 441 I

A *Reference No. 1 of 1998, In re*[2]. It is submitted that the appointment of the respondent resulting from a consultation process that failed to take into account an important and relevant fact was completely illegal and was, therefore, liable to be quashed by a writ of *quo warranto*. The respondent had no right to hold the
B office of a High Court Judge and this Court must step in to correct the grave error committed by his appointment.

**[11]** It needs to be noted here that the learned Attorney General was requested to address the Court on the question of
C maintainability of this writ petition that seeks a writ, quashing the appointment of a Judge of the High Court. The Attorney General submitted that the writ petition was not maintainable and was liable to be dismissed summarily. He submitted that the prayer for a writ of *quo warranto* quashing the appointment of Respondent 3
D was only a camouflage and what the petitioners really aimed at was the removal of the Judge who had been in office for over twelve years. The removal of a Judge in office, the Attorney maintained, was an issue directly related to the independence of the judiciary that is fundamental to the constitutional scheme.

E **[12]** The Attorney General pointed out that in order to make the judiciary independent and to make it possible for the Judges to discharge their duties without fear or favour the Constitution firmly secured the tenure of a Judge and granted that a Judge of any of
F the superior courts could only be removed from office on the basis of an impeachment motion passed by Parliament as provided under Article 124(4) (in the case of a Judge of the Supreme Court) and Article 217 read with Article 124(4) (in the case of a Judge of the High Court). The Constitution did not recognise any other mode
G for the removal of a Judge. Any deviation from the constitutional process in the garb of quashing the appointment by a writ of *quo warranto* would be violative of the scheme of the Constitution and deleterious for the independence of the judiciary.

**[13]** The Attorney General further submitted that if the
H petitioners thought that the appointment of Respondent 3 as a Judge of the Andhra Pradesh High Court was wrong and there were grounds for his removal from the office, they could always bring the matter to the notice of Parliament which alone was the constitutional forum competent to remove a Judge of the High
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2. (1998) 7 SCC 739

Court from his office for any misbehaviour committed either before or after his appointment as a Judge. He added that in case Parliament declined to take any action for the removal of the Judge on the petitioner's complaint the Court was powerless in the matter and the removal of the Judge could not be brought about by the device of quashing his appointment. He went so far as to say that in entertaining this writ petition on merits the Court would be overstepping its constitutional limits.

**[14]** Mr Shanti Bhushan, learned Senior Advocate appearing for the petitioners, on the other hand, submitted that the writ petition raised the issue of inviolability and credibility of appointment to the high office of the High Court Judge. He further submitted that the Court must not be seen as protecting someone wrongly appointed as a Judge of the High Court for, the people's faith and trust and confidence in the courts and the Judges presiding over the courts was as much necessary to support the independence of the judiciary as the guarantees under the Constitution and the laws. Mr Shanti Bhushan further submitted that in the past also similar issues came before the Court and the Court never declined to examine the merits of the case and passed appropriate orders. In support of the submission, he relied upon the decisions of this Court in (i) *Kumar Padma Prasad v. Union of India*[3], (ii) *Shanti Bhushan v. Union of India*[4], and (iii) *Mahesh Chandra Gupta v. Union of India*[5].

**[15]** The second case cited by Mr Shanti Bhushan is one which he himself had filed as public interest litigation, assailing the extension granted to Respondent 2 in that case as an Additional Judge of the Madras High Court. He relied upon para 25 of the judgment in that case but, we fail to see anything in that decision that may serve as an authority on the question of maintainability of a writ petition for quashing the appointment of a Judge after many years of his assuming the office. However, the first and the third case relied upon by Mr Shanti Bhushan deserve consideration.

**[16]** In *Kumar Padma Prasad*[3] the Court dealt with a writ petition that was filed originally before the Gauhati High Court but was later transferred and brought to this Court. The writ petition was

3. (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239
4. (2009) 1 SCC 657
5. (2009) 8 SCC 273

A filed at the stage where though the warrant had been issued under the hand and seal of the President of India, appointing one of the respondents in that case, namely, K.N. Srivastava as a Judge of the Gauhati High Court, he was still to make and subscribe the oath/affirmation under Article 219 of the
B Constitution. This means that he had not entered upon the office of the Judge and the writ petition was filed before the matter had reached the stage of Article 217 as the person whose appointment was under challenge was yet to assume the office of the Judge. In that case this Court indeed stepped in to interfere and to stop
C the appointment from materialising. This Court found and held that on the date of issue of the warrant by the President of India K.N. Srivastava was not qualified to be appointed as a Judge of the High Court. It, accordingly, quashed his appointment as a Judge of the Gauhati High Court and directed the Union of India
D and the other respondents concerned not to administer the oath or affirmation under Article 219 of the Constitution to K.N. Srivastava. K.N. Srivastava was similarly restrained from making and subscribing the oath or affirmation in terms of Article 219 of the Constitution of India. It is, thus, to be noted that the
E Court intervened in the matter before the person concerned had assumed the office of the Judge on the ground that he was not qualified to be appointed as a Judge or, in other words, was not eligible to be appointed as a Judge.

F **[17]** The concepts of "eligibility" and "suitability" were later examined by this Court in the decision in *Mahesh Chandra Gupta*[5] (to which one of us Aftab Alam, J. was also a Member). In *Mahesh Chandra Gupta*[5] challenge was made to the appointment of a Judge of the Allahabad High Court after the incumbent had
G assumed his office. In the writ petition, as it was originally filed, the appointment was questioned only on the ground that the incumbent did not possess the basic eligibility for being appointed as a Judge of the High Court. Later on, the appointment was also challenged on grounds of suitability and want of effective
H consultation process by taking additional pleas in supplementary affidavits. Kapadia, J. (as His Lordship then was), speaking for the Court brought out the distinction between "eligibility" and "suitability" and pointed out that eligibility was based on objective facts and it was, therefore, liable to judicial review. But, suitability

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5. *Mahesh Chandra Gupta v. Union of India*, (2009) 8 SCC 273

pertained to the realm of opinion and was, therefore, not amenable to any judicial review. The Court also examined the class of cases relating to appointment of High Court Judges that might fall under judicial scrutiny and concluded that judicial review may be called for on two grounds, namely, (i) "lack of eligibility", and (ii) "lack of effective consultation".

**[18]** In paras 39, 43 and 44 of the judgment this Court said: (*Mahesh Chandra Gupta* case[5], SCC pp. 290 & 292)

> 39. At this stage, we may state that, there is a basic difference between 'eligibility' and 'suitability'. The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of suitability. Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word 'consultation' finds place in Article 217(1) whereas the word 'qualify' finds place in Article 217(2).
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> 43. One more aspect needs to be highlighted. 'Eligibility' is an objective factor. Who could be elevated is specifically answered by Article 217(2). **When 'eligibility' is put in question, it could fall within the scope of judicial review**. However, the question as to who should be elevated, which essentially involves the aspect of 'suitability', stands excluded from the purview of judicial review.
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> 44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, **though lack of effective consultation could fall within the scope of judicial review**. This is the basic ratio of the judgment of the Constitutional Bench of this Court in *Supreme Court Advocates-on-Record Assn.*[1] and *Special Reference No. 1 of 1998, In re*[2]. (emphasis added)

1. *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441
2. (1998) 7 SCC 739

**[19]** In paras. 71 and 74 of the judgment again this Court observed as under: (*Mahesh Chandra Gupta* case[5], SCC pp. 305-06)

> Justiciability of appointments under Article 217(1)
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> 71. ... In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, 'eligibility' is a matter of fact whereas 'suitability' is a matter of opinion. In cases involving lack of 'eligibility' writ of *quo warranto* would certainly lie. One reason being that 'eligibility' is not a matter of subjectivity. However, 'suitability' or 'fitness' of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.
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> 74. It is important to note that each constitutional functionary involved in the participatory consultative process is given the task of discharging a participatory constitutional function; there is no question of hierarchy between these constitutional functionaries. Ultimately, the object of reading such participatory consultative process into the constitutional scheme is to limit judicial review restricting it to specified areas by introducing a judicial process in making of appointment(s) to the higher judiciary. These are the norms, apart from modalities, laid down in *Supreme Court Advocates-on-Record Assn.*[1] and also in the judgment *in Special Reference No. 1 of 1998, In re*[2]. *Consequently, judicial review lies only in two cases, namely, 'lack of eligibility' and 'lack of effective consultation'. It will not lie on the content* of consultation.* (emphasis added)

**[20]** In view of the decision in *Mahesh Chandra Gupta*[5] the question arises whether or not the case in hand falls in any of the two categories that are open to judicial review? Admittedly, the eligibility of Respondent 3 is not an issue. Then, can the case be said to raise the issue of "lack of effective consultation"?

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5. *Mahesh Chandra Gupta v. Union of India* (2009) 8 SCC 273
1. *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441
2. (1998) 7 SCC 739

* Ed.: The word "content" is emphasised in original as well.

5. *Mahesh Chandra Gupta v. Union of India* (2009) 8 SCC 273

**[21]** Mr Shanti Bhushan strongly argued that the consultation that led to the appointment of Respondent 3 as the Judge of the Andhra Pradesh High Court was completely deficient for not taking into consideration that he was accused in a pending criminal case and as a result, the appointment of Respondent 3 was wholly vitiated and it was fit to be quashed by this Court. In support of the submission Mr Shanti Bhushan heavily relied upon the decision of this Court in *Centre for PIL v. Union of India*[6] (commonly called as *CVC* case). Mr Shanti Bhushan submitted that in that case this Court had made institutional integrity as part of eligibility criteria and had, thus, highly raised the standards of qualification for appointment to a public office.

**[22]** In *CVC* case[6] a three-Judge Bench of this Court held that the recommendation for appointment of Shri P.J. Thomas as the Central Vigilance Commissioner was *non est* in law and, consequently, quashed his appointment to that post. The recommendation for appointment of Shri P.J. Thomas was made, by a majority of 2:1, by a committee consisting of (i) the Prime Minister, (ii) the Minister of Home Affairs, and (iii) the Leader of the Opposition in the House of the People (referred to in the judgment as the High-Powered Committee or HPC). The Court held that the recommendation was *non est* because HPC had failed to take into consideration the pendency of Case No. 6 of 2003 (relating to the import of palmolein oil by the Kerala Government), in which the Government of Kerala had accorded sanction for the prosecution of Shri P.J. Thomas (among others) for committing the offences punishable under Section 120-B of the Penal Code read with Section 13(1)(d) of the Prevention of Corruption Act and had based its recommendation entirely on the blanket clearance given to Shri P.J. Thomas by CVC (then in office) and the fact that during the pendency of the criminal case Shri P.J. Thomas was appointed as the Chief Secretary of Kerala, then as the Secretary of Parliamentary Affairs and subsequently as the Secretary, Telecom.

**[23]** At the first glance *CVC* case[6] appears to have some parallels with the case in hand and in order to apply the decision in *CVC* case[6] to the present case Mr Shanti Bhushan extensively cited from the judgment the passages where this Court identified CVC

6. (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609

as an institution and an "integrity institution", stressed the imperative to uphold and preserve the integrity of that institution and observed that the recommendation for appointment as CVC should be not only with reference to the candidate but the overarching consideration should be the institutional integrity of the office. (See paras 34-37, 42, 43, 47, 59 and 89 of the judgment.)

**[24]** We have given the most careful consideration to the *CVC*[6] decision and the submissions made by Mr Shanti Bhushan on the basis of that decision, all the time bearing in mind that the Court must not overlook or condone something that may have the effect of lowering down the people's faith or trust in the Judges or in courts. But we find that though there are some superficial similarities between *CVC* case[6] and the case in hand, the two cases are quite different in their core issues and we find it impossible to justly apply the *CVC*[6] decision to the facts of the case in hand.

**[25]** In *CVC* case[6] HPC was not unaware of Shri P.J. Thomas being an accused in a pending case for the offences punishable under Section 120-B of the Penal Code read with Section 13(1)(d) of the Prevention of Corruption Act. The recommendation that HPC made in exercise of the statutory power under the proviso to Section 4 of the Central Vigilance Commission Act, 2003 was in a sense in defiance of the pending trial before the criminal court. The genesis and the developments taking place in the criminal case are discussed in paras 8 to 21 of the judgment in *CVC* case[6] from which it appears that the institution of the case was preceded by the report of the Comptroller and Auditor General, followed by the report by the Public Undertaking Committee of the Kerala Assembly. On the basis of the reports, at least two writ petitions were filed (unsuccessfully) seeking direction of the High Court for institution of a criminal case. The criminal case was finally filed after the new Government came to power in the State following the election on 20-5-1996. Even after the institution of the case the matter had repeatedly gone to the High Court and travelled up to this Court. The Government of Kerala had made repeated requests to the Central Government in the Department of Personnel and Training for grant of sanction for prosecution of Shri P.J. Thomas. The matter had gone to the Central Vigilance

6. *Centre for PIL v. Union of India* (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609

Commission and there were its recommendations on record for initiation of disciplinary proceedings against Shri P.J. Thomas. In para 44 of the judgment, the Court pointed out that between the years 2000 and 2004 there were at least six notings of the DoPT suggesting that penalty proceedings may be initiated against Shri P.J. Thomas.

**[26]** In short, the fact about the pendency of the criminal case and Shri P.J. Thomas being one of the accused in the case was writ large all over the record before HPC. The fact was not only within the personal knowledge of each of the three members of HPC but it was in public domain. Hence, the recommendation of HPC was not in ignorance of the criminal case. The recommendation was for appointment of Shri P.J. Thomas as the Central Vigilance Commissioner notwithstanding his being an accused in the criminal case and HPC appeared not to see the criminal case as any impediment in the way of his appointment as the Chief Vigilance Commissioner.

**[27]** Let us now examine how far the facts of the present case bear similarity to *CVC* case[6].

**[28]** In the writ petition and in the course of hearing of the case Respondent 3 has been repeatedly called, a little loosely and rather uncharitably, an "absconder" and a "proclaimed offender" in a case of robbery and burning down of a bus. It is seen above that the criminal case in question had no element of robbery or bus burning. We may now examine how far it is correct to call Respondent 3 as an "absconder" and a "proclaimed offender".

**[29]** It is noted above that the charge-sheet was filed in the Court of the Munsif Magistrate, Mangalagiri on 19-10-1983. On October 25, the Magistrate directed for issuance of summonses, fixing 25-11-1983 as the date for hearing. The summonses, issued in pursuance of the order, are on file marked as Papers Nos. 25 to 30, but they bear no endorsement about service. At the reverse of the summonses to Accused 3 and 4, it is mentioned that they were studying in B.L., First Year, Nagarjuna University. On 25-11-1983, the accused were not present in court. Their absence was

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recorded in the ordersheet and fresh summonses were directed to be issued, fixing 23-12-1983 as the date of hearing. Whether or not summonses were issued in pursuance of the order is not known because those summonses are not on the record. On 23-12-1983, the accused were again not present and summonses were again directed to be issued, fixing 25-1-1984 for hearing. On 25-1-1984, the accused were once again not present and fresh summonses were issued fixing 15-2-1984 for hearing. The summonses are on the file marked as Paper Nos. 31 to 36. The case was then listed on a number of dates but the accused did not appear. Finally on 27-11-1985, Accused 1 appeared in court but Accused 2 to 5 were still not present. On 9-1-1987, the court ordered to separate the case of Accused 2 to 5 and proceeded with the trial of Accused 1. On 2-6-1987, statement of Accused 1 was recorded under Section 251 of the Code of Criminal Procedure.

**[30]** On 1-3-1988, the statements of PW 1 and PW 2, namely, S. Satyanarayanaraju and P. Peda Sivaiah (being the driver and conductor of the bus in question) were recorded. It is significant to note that neither the driver nor the conductor of the bus (PW 1 and PW 2 respectively), named or identified the accused who had attacked the bus. The driver said that around 50 or 60 students had charged at them in a group. The conductor said that when the driver stopped the bus, the students came shouting and blocked the bus. He became afraid and ran away with the cash bag. The prosecution did not examine any more witnesses and on 12-5-1988, Accused 1 was examined under Section 313 of the Code of Criminal Procedure. Finally by judgment and order dated 4-7-1988, the trial court found Accused 1 not guilty of the offences alleged against him and acquitted him of the charges. While acquitting him, the trial Judge noted that the prosecution witnesses were not able to identify the accused. It was also noted that as per the FIR the incident occurred at night and the bus was attacked by more than 50 persons and there was no material with regard to the identity of the culprits who attacked the bus and caused damage. It was noted that the FIR does not mention the names of the persons who participated in the offence. It was also noted that in his deposition before the trial court PW 2 (the bus conductor) denied having identified the accused in his statement under Section 161 of the Code of Criminal Procedure.

**[31]** Let us now see the case relating to the other four accused, including Accused 4, that is, Respondent 3. A

**[32]** It is noted above that on 27-11-1985 Accused 1 alone appeared before the court. On 5-3-1986 the court ordered for issuance of non-bailable warrants against Accused 2 to Accused 5. B The warrants are not on record and it is not known whether any warrants were in fact issued in pursuance of the order. On 9-1-1987 the court ordered to separate the case of Accused 2 to Accused 5. After the case was separated, the record pertaining to Accused 2 to Accused 5 was registered as CC No. 75 of 1987 C and was later renumbered as CC No. 167 of 1991. From the order-sheet it appears that from May 1987 to August 1991, the court passed orders on about twenty-four dates directing for issuance of non-bailable warrants of arrest against the accused but no compliance is noted against any order, excepting the one D passed on 30-8-1991. However, no warrants, even of that date, are on the file. Mechanical orders continued to be passed in the same fashion till April 2000 and then suddenly on 8-5-2000 the order was passed for issuance of non-bailable warrants and processes under Sections 82 and 83 of the Code of Criminal E Procedure against the accused, fixing 18-7-2000 as the next date in the case. The compliance of the order is noted on 11-5-2000 on the order-sheet. From the record it, however, appears that process under Sections 82 and 83 was issued on 11-5-2000 only against Accused 3, P.R. Muruthy, son of P.B. Subbarao. F Thereafter, the case was listed on several dates, awaiting execution of warrants and proclamation.

**[33]** On 20-6-2001 the court took steps for recording evidence in the absence of the accused under Section 299 of the Code of G Criminal Procedure and then, after the case was listed on three different dates, on 5-11-2011, the examination-in-chief of the bus driver (PW 1) was recorded under Section 299 of the Code of Criminal Procedure. On the same date, the examination-in-chief of the bus conductor (PW 2) was recorded. In their depositions H neither PW 1 nor PW 2 (the bus driver and the bus conductor) named anyone as accused and both of them said that they did not know the leaders of the group of students that had attacked the bus. Again on the same day, that is, 5-11-2011, the Assistant Public Prosecutor made an application to the effect that the other I

witnesses mentioned in the charge-sheet were passengers in the bus and their whereabouts are not known in view of the passage of time. Accordingly, it was prayed that the evidence of the prosecution may be closed.

**[34]** Thereafter, the Magistrate submitted the record to the Sessions Judge, Guntur with the request to issue proceedings to treat the case as long pending case. The Sessions Judge on 26-12-2011 gave permission to the trial Judge to declare the case being CC No. 167 of 1991 as a long pending case.

**[35]** However, soon thereafter on 31-1-2002, the Assistant Public Prosecutor moved an application under Section 321 of the Code of Criminal Procedure, seeking permission to withdraw the case in the interest of justice. A reference was made in the application to GO Rt No. 1961, dated 11-12-2001 whereby the Government had decided to withdraw the prosecution against the accused persons. On a consideration of the materials on record, by an order dated 31-1-2002, the trial Judge granted permission to the prosecution to withdraw the case and, accordingly, all the accused were discharged.

**[36]** A perusal of the court record shows that during the entire period, service of summonses in the ordinary course were not effected on the four accused persons. Although a proclamation under Sections 82 and 83 of the Code of Criminal Procedure was ordered to be issued, the record does not show any publication having been made. However, the record does show that service was sought to be effected by beat of drum only on Accused 3. There is nothing on the record to show that any attempt, let alone any serious attempt, was made to serve the summons or the non-bailable warrants on any of the accused persons.

**[37]** The purpose in adverting to the proceedings of the criminal case in detail is not to point out the irregularities in the proceeding. Anyone even with a passing acquaintance with the Code of Criminal Procedure can see that gross irregularities were committed practically at every step in the proceeding. We have referred to the proceedings to judge whether Respondent 3 could be said to have any knowledge of the case in which he was cited as Accused 4. From the record of the case which we have discussed in detail above, we find it very difficult to hold that

Respondent 3 was even aware that in some record buried in the courts at Mangalagiri he was named as an accused and he was required to appear in the court in connection with that case.

**[38]** Apart from the record of the case, there are external circumstances that strengthen this view. From the résumé of Respondent 3, as noted at the beginning of the judgment, it may be seen that before his appointment as a Judge of the High Court, he was the Additional Advocate General of Andhra Pradesh. If the case would have been within his knowledge it is unimaginable that he would not have attended to it and got it concluded one way or the other.

**[39]** Here it may also be noted that before filing this writ petition before this Court the petitioners had made a representation, both before the Chief Justice of India and the Law Minister, asking for the removal of Respondent 3 as a Judge of the Andhra Pradesh High Court on the same allegations. The representation that came to the office of the Chief Justice of India received full consideration and the Chief Justice of India called for a report on the matter from the Chief Justice of the Andhra Pradesh High Court *vide* his letter dated 18-1-2012. The Chief Justice, Andhra Pradesh High Court made a detailed enquiry and submitted his Report dated 7-2-2012. In his report the Chief Justice, Andhra Pradesh High Court came to the same conclusion as we have arrived at on an independent appraisal of the record of the case. In paras 29 and 32 of the Report, the Chief Justice stated as under:

> 29. It does appear that Justice XXX was unaware of the pendency of the criminal case. I say this from the record of the case, which speaks for itself, and the contents of which need not be repeated. I also say this for another reason.
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> 32. In my opinion Justice XXX was truly unaware of the criminal case against him and he deserves to be believed when he says so.

**[40]** In the light of the discussion made above, we have no hesitation in holding that at the time Respondent 3 was being considered for appointment as a Judge of the High Court, he was

A unaware of any case being pending in which he was named as an accused and it is quite wrong to refer to him as "an absconder and a proclaimed offender" in the case. This finding leads to another and that is, it is not a case of suppression of any material fact by Respondent 3 or at his behest. Here we wish to make it
B clear that had it been a case of deliberate and conscious suppression of material fact by Respondent 3 the position would have been entirely different. But that is not the case here.

**[41]** Now we propose to examine whether apart from
C Respondent 3, anyone else, who could be in the position to bring the fact to the knowledge of the High Court Collegium or the State Government or the Supreme Court Collegium or the Central Government, was aware of the pendency of the case.

D **[42]** Mr Shanti Bhushan submitted that the State Police had submitted the charge-sheet against Respondent 3 and hence, the State Government must be deemed to be aware of the fact. The submission plainly overlooks that the State Government is not a monolith and it does not function as a single person. The State
E Government functions in different departments manned by different people and simply because a charge-sheet was submitted by the State Police no conscious knowledge of the fact can be attributed to the State Government.

F **[43]** We have carefully gone through the record relating to the appointment of Respondent 3 as a Judge of the Andhra Pradesh High Court. From the record it is evident that none of the members of the High Court or the Supreme Court Collegia was aware of the fact. The State Government was equally unaware of the fact and so was the Central Government as is evident from
G the résumé prepared by the Law Ministry as also the IB Report.

**[44]** This is not all. In 1993, Respondent 3 was a candidate for the post of the Member of the Income Tax Appellate Tribunal and in that connection he was interviewed by a Selection Committee
H headed by a sitting Judge of the Supreme Court. He was selected for appointment and was issued an appointment letter dated 8-9-1995 as judicial member in ITAT. The appointment letter was undoubtedly issued to him only after police verification and nothing was mentioned even at that stage about any criminal case
I pending against him. He did not accept the appointment is another matter altogether.

**[45]** From all the attending circumstances, it is clear beyond doubt that not only Respondent 3 himself but practically no one was aware of the pendency of the case in which he was named as an accused.

**[46]** The question, therefore, arises: can a fact that is unknown to anyone be said to be not taken into consideration and can the consultative process faulted as incomplete for that reason. To our mind, the answer can only be in the negative. To fault the consultative process for not taking into account a fact that was not known at that time would put an impossible burden on the constitutional authorities engaged in the consultative process and would introduce a dangerous element of uncertainty in the appointments.

**[47]** In case it comes to light that some material facts were withheld by the person under consideration or suppressed at his behest then that may be a case of fraud that would vitiate the consultative process and consequently the appointment resulting from it. But in case there was no suppression and the fact comes to light a long time after the person appointed has assumed the office of a Judge and if the Members of the two Houses of Parliament consider the discovered fact sufficiently serious to constitute misbehaviour and to warrant his removal, then he may still be removed from office by taking recourse to the provisions of Article 124(4) or Article 217 read with Article 124(4) as the case may be. In case, however, the fact was unknown and there was no suppression of that fact, a writ of *quo warranto* would certainly not lie on the plea that the consultative process was faulty.

**[48]** In the light of the discussion made above, we are clearly of the view that no case is made out for issuing a writ of *quo warranto* quashing the appointment of Respondent 3 as Judge of the Andhra Pradesh High Court.

**[49]** The legal issue raised by Mr Shanti Bhushan is answered but this matter cannot be given a proper closure unless we also say that this writ petition professed to have been filed in public interest is, in our view, but a ruse to malign Respondent 3.

**[50]** In his report to the Chief Justice of India the Chief Justice, Andhra Pradesh High Court has made the following comment:

> 27. The incident occurred almost 30 years ago. The case against Justice Ramana was withdrawn almost 10 years ago. That it should be raked up now is a little inexplicable. The case does not seem to have been sensational in any manner whatsoever so that someone would be following it up. Therefore, it is a little odd that it should have suddenly surfaced now. It is possible that there is some reason behind digging up this case, but I am unable to fathom the motive.

What the Chief Justice said, in a highly restrained manner, about the representation addressed to the Chief Justice of India, applies more to this writ petition. The writ petition owes its origin to a news report published in a Telugu daily newspaper called Sakshi on 27-12-2011. A translated copy of the report is enclosed as Annexure P-11 to the writ petition. The report is based on incorrect facts and is full of statements and innuendos that might easily constitute the offence of defamation leave alone contempt of court. After the news broke out, the petitioners seem to have collected the record of the criminal case and filed this writ petition on that basis. The writ petition is drafted with some skill and it presents the facts of the criminal case in a rather twisted way in an attempt to portray Respondent 3 in bad light. The way the writ petition is drafted shows that the petitioners are competent and experienced counsel. Had they examined the records of the criminal case objectively and honestly, there was no reason for them not to come to the same conclusion as arrived at in this judgment or as appearing from the report of the Chief Justice, Andhra Pradesh High Court. It, therefore, appears to us that this writ petition is not a sincere and honest endeavour to correct something which the petitioners truly perceive to be wrong but the real intent of this petition is to malign Respondent 3.

**[51]** It is indeed very important to uphold the "institutional integrity" of the court system as pointed out in the *CVC*[6] judgment and as strongly advocated by Mr Shanti Bhushan, but it is equally important to protect the court from uncalled for attacks and the individual Judges from unjust infliction of injuries.

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**[52]** In the light of the discussions made above, we find this writ petition not only without merit but also wanting in *bona fides*. It is, accordingly, dismissed with costs of Rs 50,000 payable by each of the two petitioners. The cost amount must be deposited in a fund for the welfare of the employees of the Andhra Pradesh High Court within four weeks from today.

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